

Appeal by defendants from Report of Local Registrar allowing \$6,694.82 as damages due to collisions with \$1,241.35 for interest thereon.

1924

CANADIAN
DREDGING
Co., LTD.
v.
NORTHERN
NAVIGATION
Co., LTD.,
Hodgins,
L.J.A.

There are several items in dispute.

Item 1. \$459.15 I confirm the Registrar's Report.

Item 2 and 3 are not contested.

Item 4. \$1,293.40. I allow this and will consider it in connection with item 8.

Items 5 and 6 are not contested.

Item 7. The rate of \$35 per day is said to be excessive. I allow this at \$96 for reasons given under item 8.

Item 8. \$2,024.75 is for the earnings of dredge said to have been lost by reason of the collision, the actual expense being already charged in item 4. I think this claim is based on a misapprehension of what the plaintiffs are entitled to. When the collision occurred the plaintiffs had to decide whether to operate in the dredge's damaged condition and finish their contract or give up work. No other work was contemplated in 1919, nor was any available so far as the evidence shows. They decided to continue and lost 6 days time. In item 4 they are allowed for the expenditure during the time occupied in making the temporary repairs which enabled them to finish their contract that autumn. The fact that they cannot show any loss beyond these expenses during the 6 days and the cost of the repairs is not decisive. The *Greta Holme* (1), determines that the plaintiffs are entitled to some damages and the case of the *Marpessa* (2), sets out some of the items that will make up such damage in a case like this.

In order to save the parties further litigation, I would assess these damages at \$1,000 in addition to the expenditure during the period in question and the cost of the repairs.

But if either party prefers it, such party may at his own expense have it referred back to the Local Registrar to arrive at these damages upon the basis of the *Marpessa*, *ubi supra*.

At present this item will be allowed at \$1,000 instead of \$2,024.75 and these damages will be substituted for the profit included in items 4 and 9.

(1) [1897] A.C. 596.

(2) [1906] P. 14 and 95; [1907] A.C. 241.

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Item 9. \$1,295 being for an average of ½ hour a day for time lost while finishing the contract by reason of the injury which necessitated spending this ½ hour in replacing bolts destroyed or lost owing to operating the machinery in its damaged condition. The temporary repairs having been done and their cost allowed for, as well as the running expenses, this item represents or should represent the cost of the extra time which had to be taken to complete the contract over and above that which it would have taken if the dredge had not been injured. Half an hour every day for 74 days is of course an estimate but no doubt there was much lost time in doing the job under the conditions then existing. The defendants were saved a considerable amount by the decision to operate instead of abandoning the work and claiming damages for its non-completion, and I think a reasonable amount should be allowed.

The \$35 per day is, however, based upon profits. I think this is wrong for the reasons I have already given. It should be calculated on the daily expense of \$215 per day plus certain elements of damage which I have allowed at \$1,000 as covering 9 days, giving an amount of \$111 per day, a total of \$326. I would allow this on that basis of 3 days at \$3.26 per day or say \$978 which amount I allow.

Interest. I allow interest on the items, calculated on the basis adopted by the Local Registrar.

The items are allowed as follows, with interest as indicated, given below:

Allowed	Struck Off
1\$ 459 15	
2 212 86	
3 691 05	
4 1,293 40	
5 541 29	
6 37 33	
7 96 00	7..... 44 00
8 1,000 00	8..... 1,024 75
9 978 00	9..... 317 00

The report will be varied as indicated. If a reference is required notice must be filed with the Local Registrar within one week, in which case there will be a reference back to him limited to the question dealt with under item 8.

As success is divided there will be no costs.

Judgment accordingly.